



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

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on the 3rd day of December, 1998

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**1999 U.S.-ITALY COMBINATION SERVICE CASE**

**Docket OST-98-4854**

Application of

**AMERICAN AIRLINES, INC.**

**Dockets OST-98-4806**

for allocation of seven weekly U.S.-Italy combination  
frequencies

Applications of

**US AIRWAYS, INC.**  
**DELTA AIR LINES, INC.**  
**TOWER AIR, INC.**

**Dockets OST-98-4809**  
**OST-98-4757**  
**OST-98-4808**

under 49 USC §§ 41108 and 41102 for certificates of  
public convenience and necessity and for U.S.-Italy  
frequency allocations

**ORDER INSTITUTING PROCEEDING**

**Summary**

By this order we institute the **1999 U.S.-Italy Combination Service Case, Docket OST-98-4854**, to select a carrier or carriers to operate the seven weekly frequencies that become available April 1, 1999 for U.S.-Italy combination services. We consolidate the frequency application of American Airlines, Inc., and the certificate/frequency applications of Delta Air Lines, Inc., Tower Air, Inc., and US Airways, Inc. into this proceeding.

## Background

On November 11, 1998, representatives of the United States and Italy initialed, *ad referendum*, a Protocol to the U.S.-Italy Air Transport Services Agreement. That Protocol constitutes an open-skies agreement. Pending the effectiveness of the Protocol, the two sides agreed to expand services in the market by permitting airlines of each side to operate a total of seven additional weekly combination service frequencies between any point or points in the United States and any point or points in Italy, effective April 1, 1999.

By Notice dated November 13, 1998, the Department solicited applications from U.S. carriers interested in using the available frequencies. Applications were due November 23 and answers to applications were due November 25.

## Applications and Responsive Pleadings

Four U.S. carriers filed applications. American requested an allocation of the seven frequencies that are available in order to operate service in the Chicago-Rome market using B-767-323 aircraft. American stated that it already holds the necessary certificate authority to operate the proposed services. Delta requested a certificate and a frequency allocation to serve the Atlanta-Rome market using B-767-300ER aircraft. Delta's flights would operate on an Orlando-Atlanta-Rome routing. US Airways requested certificate authority and a frequency allocation to serve the Philadelphia-Milan market using B-767-200ER aircraft. Tower requested certificate authority and an allocation of two weekly frequencies to operate service in the New York (JFK)-Rome market using B-747 aircraft. Tower would operate its service on a seasonal basis commencing May 1, 1999. The remaining three applicants stated that they are prepared to begin service on April 1, 1999 when the frequencies become available and would operate on a year-round basis.

American, Delta, US Airways, the Division of Aviation of the City of Philadelphia, the Orlando Aviation Authority, the City of Chicago, and the Georgia and Atlanta Parties filed answers to the applications.

Each applicant carrier argues that its application is superior to that of the others and objects to any other carrier's application to the extent it would preclude approval of its own application. American and US Airways argue that the applications are mutually exclusive and urge the Department to institute a selection proceeding to determine which carrier should be allocated the additional seven frequencies. Delta argues that its application is clearly superior to those of the other applicants, and it urges the Department to proceed directly to issuance of a tentative decision selecting Delta for award of the available frequencies as it has in certain other proceedings.<sup>1</sup>

Philadelphia supports US Airways' application; Orlando and the Georgia and Atlanta parties support Delta's application; and Chicago supports American's application. Each of the civic parties emphasizes the importance of the proposed new services to its community and region.

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<sup>1</sup> Delta cites the Department's recent decisions regarding allocation of U.S.-France frequencies, Order 98-10-21, and award of U.S.-London (Gatwick) authority, Order 98-7-25.

## **Decision**

We have decided to institute the **1999 U.S.-Italy Combination Service Case** to select a U.S. carrier(s) to use the seven additional weekly frequencies available April 1, 1999 for U.S.-Italy combination services.

As we have already solicited applications from U.S. carriers interested in allocation of these frequencies, we will not solicit further applications for the new frequencies. We will consolidate the applications filed by American, Delta, Tower Air and US Airways into this proceeding.

Whether authorizing carriers for this service is consistent with the public convenience and necessity will not be at issue. The traffic rights involved constitute a valuable resource obtained in exchange for granting Italy route opportunities for its airlines to serve the United States. The introduction of additional U.S. carrier service will provide new service options to travelers and shippers and will enhance competition in the U.S.-Italy market. In these circumstances, we find that the public interest clearly calls for use of the rights.

In determining which carriers/gateways will be authorized, our principal objective will be to maximize the public benefits that will result from award of the authority in this case. In this regard, we will consider which applicants will be most likely to offer and maintain the best service for the traveling and shipping public. We will also consider the effects of the applicants' service proposals on the overall market structure and level of competition in the U.S-Italy market, and any other market shown to be relevant, in order to promote an air transportation environment that will sustain the greatest public benefits. In addition, we will consider other factors historically used for carrier selection where they are relevant.

In order to assure that the valuable route rights are not wasted, we intend to issue backup authority in this proceeding should the selected carrier not operate the proposed services. The carriers in this case have proposed service from different gateways. The considerations that lead to the selection of a carrier and gateway are entirely interrelated, and a gateway's selection for primary service by a particular carrier does not mean that a different carrier at the same city would necessarily represent the next-best alternative. Our primary focus in awarding backup authority is to maximize use of the available route rights in the event that the primary carrier does not institute service or discontinues service during its first year of operations, not to ensure continuation of service from a particular gateway.

## **Procedures and Evidence**

We have decided to use written, non-oral show-cause procedures under Rule 1750 of our regulations (14 CFR 302.1750) to process this case. After a careful review of the pleadings submitted, we believe that show-cause procedures are appropriate and that by using these procedures we can establish a complete evidentiary record and make a selection with the least possible delay and without unnecessary costs to the applicants. We find no material issues of fact that would warrant an oral evidentiary hearing in this case, and we note that no applicant requested oral, evidentiary procedures. While Delta has suggested that we proceed directly to a tentative decision, we do not find that the existing record is adequate for us to make a decision at

this time. Unlike the other cases cited by Delta, here a total of only seven weekly frequencies are available for allocation. Four carriers, including one not now offering scheduled service in the Italy market, have sought award of these frequencies, and the applications involve service from different U.S. cities and different Italian destinations. In these circumstances, we are not persuaded by Delta's arguments that the record is adequate now to proceed to a tentative decision in this case.

This case, which is subject to Rule 22a(d) of our procedural regulations [14 CFR 302.22a(d)], will be assigned to the Department's Senior Career Official, who will be the DOT decisionmaker in this proceeding.

We have appended to this order an evidence request for the benefit of the parties in this case. In this regard, we emphasize that the appended evidence request includes specific instructions regarding the type and format of the information to be submitted and, in some instances, the sources of information to be used. We view adherence to these directives as critical to our consideration of the proposals in carrier selection cases. We have previously addressed evidentiary submission irregularities and the importance of having a common standard for comparison of exhibits.<sup>2</sup> Against this background, we put all applicants in this case on notice that we expect full compliance with the evidence request appended to this order. Any carrier not complying in any material respect with our request will be subject to elimination from consideration for an award in this case.

In addition to the material requested, applicants and any other parties may submit any additional information that they believe will be useful to us in reaching a decision. To the extent that carriers want to offer alternative traffic forecasts, based on fully documented sources, they are free to do so as additional information for our consideration and comment by other parties to this case. At a minimum, however, applicant carriers must provide a forecast in the format and using the sources set forth in the appended evidence request.

We will also require American, Continental Airlines, Inc., Delta, Trans World Airlines, Inc., United Air Lines, Inc., and US Airways, the U.S. carriers currently providing combination service in the U.S.-Italy market, to file the service data set forth in the attached Appendix (Appendix A at 2, Section IV A.2). We believe that such data are necessary for a complete record in this case, and therefore, we are exercising our power under 49 U.S.C. 41708 to require these carriers to file these data.

Consistent with our policy with respect to limited-entry route rights, we will award the U.S.-Italy authority at issue in this proceeding in the form of temporary, experimental certificates of public convenience and necessity under 49 U.S.C. section 41102(c), where applicable. The duration of authority will be five years for the primary carrier and one year for the backup carrier, unless the latter authority is activated during that time, in which case, it will continue in effect for five years.<sup>3</sup> The frequency allocation would be of indefinite duration, but subject to the continued

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<sup>2</sup> See, e.g., Orders 96-4-48 at 9, Order 89-10-2, Order 89-9-36, and Order 86-10-16.

<sup>3</sup> See Section 399.120 of our regulations. We remind the applicants that in cases such as this where we are making selections and awarding authority for limited-entry markets, it is our practice to issue certificate authority only for the markets the carriers actually have submitted a proposal to serve.

effectiveness of the holder's underlying certificate authority as well as to our standard condition that we may amend, modify or revoke the allocation at any time and without hearing, at our discretion.

In addition, consistent with our standard practice, the frequencies allocated in this proceeding will be subject to our standard 90-day dormancy condition, wherein frequencies will be deemed dormant if they are not operated for 90 days, except where service in the market is seasonal. In all such instances of seasonal service, however, a carrier must notify the Department that its operations are of a seasonal nature; otherwise, the dormancy condition will apply. Under the dormancy condition, if flights allocated are not used for 90 days, the frequency allocations expire automatically, and the frequencies revert to the Department for reallocation.

### **Procedural Timetable**

The new rights for U.S. carriers to serve Italy become effective April 1, 1999. As we stated in our notice soliciting applications, given this date, we intend to process this case on an expedited procedural schedule to ensure that the selected carrier will be in a position to commence services as soon as the route rights become available. To this end, we will make the DOT Information Responses available immediately. We are establishing the following procedural schedule for other submissions in this case:

Carrier Information Responses:	December 7, 1998
Petitions for Reconsideration:	December 7, 1998
Answers to Petitions for Reconsideration:	December 9, 1998
Direct Exhibits:	December 16, 1998
Rebuttal Exhibits:	December 30, 1998
Briefs:	January 13, 1999

All dates are delivery dates. An original and four copies of all submissions are to be received by the Department of Transportation, Dockets, no later than the dates indicated.<sup>4</sup> Due to the expedited nature of this case, service by facsimile is authorized. Parties should include their fax numbers on their submissions and should indicate on their certificates of service the methods of service used.

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<sup>4</sup> The original filing should be on 8½"x 11" paper using dark ink and be unbound without tabs, which will expedite use of our docket imaging system. Submissions can also be sent using the Electronic Submission capability at the Dockets DMS web site, <http://dms.dot.gov>.

**ACCORDINGLY,**

1. We institute the **1999 U.S.-Italy Combination Service Case**, Docket **OST-98-4854**, to be decided by non-oral, show-cause procedures under Rule 1750 of our regulations (14 CFR 302.1750);
2. The proceeding instituted in ordering paragraph one will consider the following issues:
  - a. Which primary and backup carrier(s)/gateways should be selected to provide service between a point in the United States and a point or points in Italy, consistent with the provisions of the November 11, 1998 U.S.-Italy Memorandum of Consultations using the seven weekly frequencies that become available for U.S. carrier combination services on April 1, 1999; and
  - b. What terms, conditions, and limitations should be imposed on any existing certificate authority, any new certificate authority, and any frequency allocation awarded in this proceeding;
3. We consolidate the applications of American Airlines, Inc., Docket OST-98-4806, Delta Air Lines, Inc., Docket OST-98-4757, Tower Air, Inc., Docket OST-98-4808, and US Airways, Inc., Docket OST-98-4809 into the **1999 U.S.-Italy Combination Service Case**, Docket **OST-98-4854**;
4. We require that petitions for reconsideration of this order be filed no later than **December 7**, 1998; answers to such petitions shall be due no later than **December 9**, 1998; and
5. We will serve this order by facsimile on American Airlines, Inc.; Continental Airlines, Inc.; Delta Air Lines, Inc.; Tower Air, Inc.; Trans World Airlines, Inc.; United Air Lines, Inc.; US Airways, Inc.; the City of Philadelphia; the City of Chicago; the Orlando Aviation Authority; the Georgia and Atlanta Parties; the Ambassador of Italy in Washington, DC; and the U.S. Department of State (Office of Aviation Negotiations).

By:

**CHARLES A. HUNNICUTT**  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web  
<http://dms.dot.gov/general/orders/aviation.html>.*

## EVIDENCE REQUEST

### I. Advisory Regarding Compliance

In responding to this evidence request, all parties are advised to heed the admonitions and notice regarding compliance contained in the attached order, at 4.

### II. Public Disclosure of Data

Pursuant to section 241.19-6 of the Department's regulations, it is determined that the Department's T-100 data for the period January 1, 1995, through a final Department decision in this proceeding, and the Origin & Destination Survey Data (Data Bank 2-A) for the period January 1, 1994, through final Department decision in this proceeding, for operations between the United States and Italy, are material and relevant to a final determination of the issues in this case. Those data have been released to the U.S. carriers and U.S. non-airline civic and governmental parties to this proceeding, who will be free to use those data to the extent they deem necessary.

### III. Procedures and Ground Rules

In the interest of a complete and adequate record, the parties should submit the following information in the form of exhibits. The exhibits should contain sufficient detail, including sources, bases, all assumptions, and methodology, so that, without further clarification, any party can derive the final results from the basic data.

### IV. Request for Information and Evidence

#### A. Information Responses

##### 1. DOT Data

The Economic & Financial Analysis Division of the Office of Aviation Analysis will make available to the parties the following data in the form of information responses:<sup>1</sup>

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<sup>1</sup> Due to the volume of this material, we will be unable to print and distribute copies to the parties. One copy of these materials will be made available for the parties' use in Room 4201, 400 Seventh Street, S.W., Washington, D.C., upon request. In addition, the Department will issue on request copies of the information requests on computer diskettes. Parties who wish to receive diskette versions of the information responses, should contact the Economic & Financial Analysis Division, at (202) 366-2352. The Department will make this material available immediately.

Use of the data contained in the Department's Information Responses (either from hard-copy or computer diskette) is restricted to representatives of applicant carriers and interested U.S. parties (*i.e.*, those that have filed applications or comments) in this proceeding.

- (a) T-100 nonstop segment data, by month, beginning January 1, 1995, through the latest available month, between the United States, on the one hand, and Italy, on the other.
- (b) T-100 on-flight market data, by month, beginning January 1, 1995, through the latest available month, between the United States, on the one hand, and Italy, on the other.
- (c) For the Calendar Years 1994 through June 30, 1998, O&D traffic from Table 15 of the Department's O&D Survey between all U.S. points, on the one hand, and Rome and Milan, Italy, on the other.
- (d) For the 12 months ended June 30, 1998, from the Department's O&D Survey between all U.S. points, on the one hand, and Rome and Milan, Italy, on the other, that used the following gateways: Atlanta, Boston, Chicago, Los Angeles, Miami, New York, Philadelphia, Washington, DC and "all others."

2. Incumbent Data (American, Continental, Delta, TWA, United, and US Airways)

For each month for the twelve months ended September 1998, provide the number of flights and complete flight itinerary for all flights operated in each city-pair market where service was provided in the U.S.-Italy market, and the type aircraft used in providing those services. If service was seasonal, the markets and level of service should be clearly identified. Carriers should distinguish flights operated under code share and those that are not operated under code share.

B. Direct Exhibits

The applicant carriers are directed to provide the sources, in exhibit form, for their traffic forecast. The source data for traffic forecasts made by any party shall be (1) the O&D Survey and/or (2) the U.S. International Air Travel Statistics (commonly referred to as INS Data), or (3) a combination of these data sources, provided that the respective contributing role of each source is clearly delineated. Indicate growth rates, stimulation rates, and participation rates, and clearly outline the bases for such rates.<sup>2</sup>

Any party may provide a separate, additional forecast based on other source data if it wishes, but if so, that party should clearly explain the differences between its data source and the two specified above (*e.g.*, differences in collection methods, or adjustments made to raw data). Furthermore, the information in such additional forecast shall be set forth in such a manner that any other party could construct a traffic forecast from the exhibits without the necessity of having the actual source document at hand.

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<sup>2</sup> The base year for traffic forecasting purposes should be 12 months ended June 30, 1998, and the forecast year should be the 12 months ended March 31, 2000.

## 1. Applicant Carriers

Submit, at a minimum, the following:<sup>3</sup>

(a) Firm date for instituting service in the market, a breakdown for peak and off-peak seasons, and single-plane and nonstop-to-nonstop connecting schedules proposed to be operated in the forecast year (12 months ending March 31, 2000).

Schedules should contain flight numbers, complete routings from origin to destination (including behind-gateway and beyond-gateway points), departure and arrival times, equipment types (including seat configuration by class of service), days scheduled, classes of service offered, and the limitations, if any, on the number of seats available for each class of service;

(b) Separate passenger traffic forecasts on an O&D market-by-market (city-pair) basis (single-plane and on-line connecting and, to the extent possible, interline connecting) for the 12 months ending March 31, 2000. The forecasts should be based upon the applicant's proposed schedules and should detail specifically the data sources of all traffic. Include any anticipated traffic changes in other markets on the applicant's existing system in which service will be altered as a result of the proposal in this case. The basis for any forecasting technique used should be clearly explained. Indicate any anticipated seasonal fluctuations;

(c) An indication whether or not the aircraft to be used in the proposed schedules are on hand or on order. If on hand, indicate where and to the extent to which those aircraft are currently being used. If on order by purchase or lease, indicate when they will be delivered and how the aircraft will be financed. Indicate

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<sup>3</sup> The original filing should be on 8½" x 11" white paper using dark ink and be unbound without tabs, which will expedite use of our docket imaging system.

Carriers should also provide the Department with a computer diskette of all information responses, exhibits, and briefs prepared using electronic spreadsheet or word processing programs. Such diskettes should be filed with the Department's Economic and Financial Analysis Division of the Office of Aviation Analysis, X-55, Room 6401, 400 Seventh Street SW, Washington, DC 20590. Diskettes should be DOS formatted. Submissions prepared with Microsoft Excel®, Lotus 1-2-3® (version 3.x or earlier), Microsoft Word®, or WordPerfect® (version 5.2 or earlier) should be filed in their native formats. Parties using other software may either (1) file IR's, exhibits and briefs in the foregoing formats, or (2) contact Mr. Michael Lane at 202-366-2352 for format compatibility information or to seek a waiver, which will be considered on an *ad hoc* basis. Submissions in electronic form will assist the Department in quickly analyzing the record and preparing its decision. The paper copy of all submissions, however, will be the official record.

whether the aircraft to be used comply with FAR-36. If not, indicate plans for achieving compliance;

(d) Estimated number of gallons of fuel to be consumed by aircraft type in the forecast year as a result of the proposed service;

(e) Responses to the following interrogatories:<sup>4</sup>

(1) Will the carrier, if selected as backup, accept a condition on its authority which (a) permits it to implement authority within the first year should the primary carrier withdraw from the market, and (b) expires at the end of one year should the authority not be activated?

(2) Will the carrier selected for primary authority accept a condition on its award requiring institution of service by a date specified by the Department? What date should the Department specify?

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<sup>4</sup> Any certificate issued in this case for primary authority will be for five years' duration, and any backup certificate and frequency allocation issued will be for one year.